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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/485,820	02/16/2000	NOBUHITO UEDA	Q057694	2221

7590

05/24/2005

SUGHRUE MION ZINN MACPEAK & SEAS  
2100 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20037-3213

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/485,820

Applicant(s)

UEDA ET AL.

Examiner

NEIL LEVY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5,7,8,11,12 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,7,8,11,12 and 17 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 7, 8, 11, 12, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Levy - 5698210.

The rejection of record is maintained.

Applicant argued Enveloped means to enclose or enfold completely. Levy's powdered, granular, or agglomerated compositions (line 23-25) are ~~in~~<sup>in</sup> PVA pouch 10 (col. 6, line 27-30) having a continuous outer wall 12 that envelops the composition of the invention therein. Meets this definition. Applicant has argued examiner misinterprets claim language. If the language is thus open to interpretation, or misinterpretation, examiner is "interpreting" the exact language one of ordinary skill in the art, Levy, has used. Examiner suggests a more exacting language, in accord with the specification, is required to establish the meets and bounds of the invention to be claimed, and distinguish between an aggregate of powder pellets, granules and other water soluble solid formulations – presumably, as unstated in claim 1, capsules, tablets, beads, rods or any other solid shaped form or combination of forms, the whole within a PVA shell, or pouch – shown by Levy, as opposed to each individual separate granule, powder, pellet, tablet bead, rod or other solid shaped form, not in combination, being enveloped or encapsulated by PVA.

At Levy, the hydroxyl compounds are Levy's coatings (col. 10, line 14-57) and constitute alkanols, Levy's fatty alcohols (line 24, col. 10) or Levy's fatty alcohol esters of citric acid or glycerol stearate (line 37) the instant hydroxyl fatty acid

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esters (line 24, 25) Example 1 shows the coatings, in this case cetyl alcohol, mixed with the active solid pesticide, in this case B.t.i. The resultant powders were stored in zip lock bags or glass bottles. These powders constitute the solid pesticide formulations of the instant claim. Insertion in the PVA pouches (col. 6, lines 20-30) is not further evident in this patent. The zip lock bags are not specified as PVA, or otherwise indicated as water-soluble; they constitute storage containers, as applicant submits. We also agree, the PVA does not function to completely enclose the solid particular, or precipitated, formulations when mixed with the active agent and other components – rather, it is part of the carrier as a joint function coating component. This is a separate use of PVA than that at col. 6, line 27-30.

Claims 1, 3, 5, 7, 8, 11, 12 and 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al 5639465 in view of Surgant 4544693.

Applicant's arguments of hindsight, on July, 04, are not persuasive – Huang clearly indicates the compositions are to be bagged (col. 1, lines 19-25). Further, Huang is for rice paddy application, a clear indication to the artisan to consider a water-soluble bag, as of, for example, Surgant. Any advantages argued for on 1/31/05, non-obvious, are not claimed in the instant application.

Applicants arguments are persuasive re Homma; EP-0579951; the rejection is withdrawn.

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



**NEIL S. LEVY**  
**PRIMARY EXAMINER**

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/LR  
May 18, 2005



NEIL S. LEVY  
PRIMARY EXAMINER